

REMARKS**Paragraphs 1-7 of the Office Action**

Claims 1 and 2 are rejected under 35 U.S.C. §103(a) as being unpatentable over
5 U.S. Patent Number 4,045,104 to Peterson in view of U.S. Patent Number 5,727,700 to Digney.

The applicant respectfully submits to the Examiner that the Examiner has used uncommon terminology in an effort to use hindsight reconstruction to find the elements of applicant's device. This creates two errors in the obviousness argument. The first is
10 that the Examiner has not, in fact, found the elements of applicant's device. The second is that even if the Examiner has found the elements, no one would have made the combination asserted by the Examiner. For this reason, it is believed that all claims are in condition for allowance.

As to the first point, the Examiner has stated that Peterson shows a first loop and a
15 second loop. This is not what Peterson shows. Peterson shows walls 4, 6, 8, 10 and 12 supported by a frame. The frame is not a "loop." A loop is a rigid band of material having an opening therethrough. The Examiner cannot pick and choose elements of Peterson but must look at Peterson as whole to see if Peterson actually suggests a loop structure, and only a loop structure, absent any materials that may block the central
20 opening. Any teaching of blocking that central opening obviates any arguments concerning loops. Since Peterson does not teach a band but a wall supported by a frame, no one looking at Peterson would ever deduce that the frame would have any other use than as a wall support. And, in fact, Peterson states that it is the purpose of its device to form a rigid support for a cabinet. "The unique configuration and design of the
25 components of the frame 2 allow for maintaining the frame in a mechanically stressed and rigid disposition and *for maintaining the panels and base members in place.*" Peterson, column 2, 40-44 (emphasis added). Without the walls (panels and base members) Peterson's device has no purpose because it would then cease to be a cabinet.

Peterson is not teaching loops but a cabinet and the Examiner's use of Peterson to
30 find upper and lower loops is evidence that the Examiner can find no structure similar to applicant's device. In essence, the asserted combination of Peterson with Digney made

in the Official Action would require one to completely abandon the primary element of Peterson (i.e., the walls) to use Peterson's frame for an entirely new (and not suggested) purpose--that of a mobile balloon holder--and combine it with the cage (but no other element) of Peterson. It is submitted therefore the possibility of utilizing the walls of
5 Peterson as an open mobile balloon holder can only be motivated by hindsight knowledge of applicant's disclosure.

As to the second point, the Examiner states that one could replace the top wall of the cabinet with the cage in order to view into the cage. Why would anyone want to do such a thing? Absent hindsight usage of applicant's claimed structure, no one would ever
10 replace a cabinet top with a cage. Such use of applicant's claims as a template is impermissible.

[T]he Examiner relied upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the
15 claimed invention is rendered obvious. This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.' [citations omitted]

In re Fritch, 972 F.2d 1260; 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), (in part quoting
20 from In re Fine, 837 F.2d 1071, 1075; 5 USPQ2d 1596, 1600 (Fed. Cir. 1988)). A cabinet has the sole purpose of storing items, and doing so in a manner that will prevent dust from accumulating on the items therein. Therefore, there are two types of cabinets in existence. The first type includes those that are solid wood, metal or other opaque material, and typically include one or more drawers or doors for accessing an interior of
25 the cabinet. The second type includes those that have faces or sides comprised of glass so that a person can view the objects therein. Display cases used in retail services might also use a glass top. However, never do cabinets include cages for an upper wall since an upper wall would allow accumulation of dust on the items within the cabinet and thereby dirty items intended to be kept clean. The Examiner further states that you could do this
30 after removing the upper panel of Peterson. Again, why would anyone remove the upper panel? Peterson never suggests this would be done so any motivation to make the modification would have had to come from applicant's disclosure. For these reasons, claims 1-3, 5 and 7-9 are believed to be in condition for allowance.

The applicant respectfully requests withdrawal of the rejection.

Paragraph 8 of the Office Action

5 Claims 4, 6, and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson in view of Digney as applied to claims 1-3, 5, and 7-9 above, and further in view of U.S. Patent Number 2,839,320 to Hill.

10 It is respectfully submitted to the Examiner that though a person might make certain connections thinner to use less material, the test is whether one reading Peterson in view of Hill would modify the Peterson device with the Hill components. The answer is that it would not be the case because the purpose of the Peterson device, as stated above and within the Peterson patent, is to form a very rigid structure and to secure the walls within the frame. Peterson accomplishes this by using male couplers 40 extendable into the shafts and detents 42 to engage apertures 44 in the shafts. This configuration is very stable and required because the side panels of the Peterson cabinet are secured within channels formed in facing ones of the shafts. Were the male couplers to become dislodged from the shafts, the side panels would fall out, and the weight of the side panels alone could cause this to happen absent this securing structure. Applicant's and Hill's structures are not sturdy enough for holding side panels. Thus, neither applicant nor Hill states such. That the Examiner has included such a modification in direct opposition to the teachings of Peterson is proof of lack of motivation and of proof of hindsight use. Therefore, claims 4, 6 and 10 are believed to be in condition for allowance.

The applicant respectfully requests withdrawal of the rejection.

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CONCLUSION

In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

10 Respectfully submitted,



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